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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

IN THE MATTER OF AMENDMENT OF SECTION 73.202(b) TABLE OF ALLOTMENTS, FM BROADCAST STATIONS (THORNDALE, TEXAS)

MM Docket No. 99-243
RM-9675

RECEIVED

JUN 14 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Chief, Allocations Branch

REPLY COMMENTS

Cameron Broadcasting Company ("Cameron Broadcasting"), permittee of KHTZ(FM), Cameron, Texas, by counsel, pursuant to the Commission's Public Notice, Report No. 2487, released June 1, 2001 ("Public Notice") respectfully submits its *Reply Comments* in the above-captioned proceeding. In support thereof, the following is stated:

I. INTRODUCTION

1. On June 1, 2001, the Commission released the Public Notice, affording Cameron Broadcasting the opportunity to file reply comments in this proceeding in response to the Petition for Rulemaking file by Houston Christian Broadcasters, Inc. ("HCBI") on November 30, 1998.[1] That petition is in conflict with a one-step upgrade application filed by Cameron Broadcasting on December 21, 1998 to upgrade the facilities of KHTZ(FM) from Channel 286A to Channel 286C3. As will be demonstrated below, the HCBI petition is without merit and cannot be granted over Cameron Broadcasting's one-step upgrade application.

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List A B C D E

[1] In the Public Notice, the Commission expressly found that the counterproposals of Munbila Broadcasting Corporation and Elgin FM Limited partnership were required to protect the Cameron Broadcasting upgrade application on 286C3.

A. There is No Reason for Granting the HCBI Petition

1. HCBI's Thorndale Application is Subject to Auction

2. The HCBI petition should not be granted over the Cameron Broadcasting application. Originally, HCBI sought the addition of a new noncommercial channel with cut-off protection solely as a means of resolving an existing proceeding involving mutually exclusive applications for a new commercial FM station at Thorndale, Texas. In its petition, HCBI set out its sole rationale for reserving the Thorndale channel for noncommercial use:

> The Thorndale FM proceeding...remains "frozen" with no resolution in sight due to [the] "mix" of commercial and noncommercial applicants.

HCBI Petition for Rulemaking, p. 3, ¶2.

3. Whatever merit this argument may have had at the time the HCBI petition was filed, it has no merit at all following the Commission's decision in *Report and Order The Reexamination of the Comparative Standards for Noncommercial Educational Applications*, 15 FCC Rcd 7386 (2000) ("*Report & Order*") *aff'd on recon.*, *Memorandum Opinion and Order*, FCC 01-64, released May 4, 2001. There, the Commission explicitly ruled that noncommercial applicants such as HCBI would have to participate in the auction of a given frequency in order to obtain a new channel in the commercial band.[2] Consequently, there is no longer any reason for the Commission to grant HCBI's petition for rulemaking.

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2 *Id.* at 7429-30.

2. The HCBI Petition Cannot be Granted in View of the Commission's Longstanding Policy Not to Reserve a Commercial Channel for Noncommercial Use Where A Suitable Noncommercial Service is Available for Use in the Community

4. The Commission has long held that a commercial channel cannot be reserved for noncommercial use where a reserved band facility is available for use at the applicable community. Facilities designated as noncommercial educational stations are confined to operation within the reserved portion of the FM band (Channels 201-220).[3] Only in very rare and exceptional circumstances will the Commission reserve a commercial channel for noncommercial use. Such a proponent must meet a stringent, two part showing that:

> 1) the NCE radio proponent is technically precluded from using the reserved band by existing stations or previously filed applications or and NCE television proponent shows that there is not reserved channel assigned to the community: and
>
> 2) the NCE proponent would provide a first or second radio or television NCE service to 10% of the population within the proposed allocation's 60 dBu (1 mV/m) service contour (radio) or Grade B contour (TV). New NCE service to fewer than 2,000 people would be considered insignificant for purposes of this determination.

Report and Order, at p. 7434. In the present case, HCBI based its Petition on the notion that all noncommercial channels are precluded at Thorndale.[4] However, the engineering statement provided by HCBI claimed only that it would be "difficult" or not "workable" to allocate a noncommercial channel to Thorndale.[5] In truth, Cameron Broadcasting has

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3 47 CFR §73.501.

4 See, HCBI Petition, p. 5.

5 See, HCBI Petition, Engineering Statement, p.2.

demonstrated that noncommercial Channel 211A can be allotted to Thorndale, Texas in complete compliance with the Commission's rules, including the rules governing Channel 6 preclusion.[6]

5. The existence of a viable noncommercial channel is an absolute bar to the reservation of a commercial channel for noncommercial use. *Ukiah, California*, 11 FCC Rcd 13933, 13935 (1996), *citing*, *Collegeville, Minnesota*, 10 FCC Rcd 3328 (1995); *Comobabi, Arizona*, 47 FR 32717, July 29, 1982; *Burlington and Newport, Vermont*, 45 RR 2d 786 1979); *Presque Isle, Maine*, 36 RR 2d 840 (1976); *Waco, Texas*, 10 FCC 2d 865 (1967). Therefore, HCBI failed to make the appropriate showing in its petition. *See*, *Bulls Gap, Tennessee*, 10 FCC Rcd 10444 n.1 (1995) (request for reservation of channel for noncommercial use found to be unacceptable and not placed on public notice where precluded from use because of other existing FM licensees).

6. Not only does Thorndale, Texas possess an available noncommercial channel, it also receives the signals of two noncommercial stations: KNCT(FM) on Channel 217C1 at Killeen, Texas, and KMFA(FM) on Channel 208C1 at Austin, Texas. Both provide a 60 dBu or better signal to Thorndale.[7] HCBI proposal will serve 35,548 persons. Cameron Broadcasting's proposal on the other hand will serve 57,285 persons an increase of 31,684 persons over Cameron Broadcasting's authorized Class A service.[8]

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6 Engineering Statement of Doug Vernier, attached hereto as Exhibit 1.

7 *Id.*

8 *Id.*

B. The Public Interest Weighs in Favor of Upgrading Cameron Broadcasting's Facilities to Channel 286C3 Over Reservation of Channel 286A at Thorndale, Texas for Noncommercial Use

7. Allowing Cameron Broadcasting to upgrade to Channel 286C3 would result in a preferential arrangement of allotments consistent with criteria set out in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992). Those priorities are as follows:

(1) First full-time aural service;

(2) Second full-time aural service;

(3) First local service; and

(4) Other public interest matters.

[Co-equal weight given to priorities (2) & (3)].

8. In the present case, items (1), (2) and (3) are not applicable. That leaves the analysis to rest solely on factor (4). However, in terms of the public interest, Cameron Broadcasting's construction permit is entitled to a substantial preference over HCBI's reservation of the a commercial channel for noncommercial use for a number of reasons:

1) Thorndale has an open noncommercial allotment available for use by HCBI on Channel 211A;

2) Thorndale is already served by the reception of two noncommercial FM stations;

3) a greater listening population will be served by Cameron Broadcasting's higher class, wide area service on Channel 286C3 at Cameron, Texas;

9. In addition to the above, the HCBI proposal is unprecedented and unacceptable as a matter of Commission policy. It combines two unusual legal theories that cannot be upheld in the present circumstances. On one hand, HCBI seeks to reserve a commercial channel for its own noncommercial use despite the existence of an acceptable

noncommercial channel. On the other hand it requests cut-off protection to extricate itself from a commercial FM proceeding which it chose to enter, rather than apply for the noncommercial facility.

10. The HCBI proposal does not pass muster from the standpoint of those few cases where the Commission has afforded full cut-off protection in order to avoid a comparative hearing, e.g., see, *Copeland, Kansas*, 5 FCC Rcd 7682 (1990); *Roseburg, Oregon*, 6 FCC Rcd 4369 (1991); *Albion, Nebraska*, 10 FCC Rcd 3183 (1995). In these cases, the underlying proceeding involved a limited number of parties who were otherwise facing a comparative hearing. In each case all of the parties obtained a channel and the Commission emphasized in its rational that that the action was taken in order to avoid the need, not present in the instant case, for a comparative hearing.

11. In the present case, only HCBI would benefit from its proposed relief. Adoption of the HCBI plan would not resolve the mutual exclusivity between the remaining Thorndale applicants. Those applicants would have to go to auction in any event, albeit sans HCBI. Although, HCBI in its Petition decries the "mix" of commercial and noncommercial applicants who filed at Thorndale,[9] it must be remembered that it was HCBI who decided to join that mix in the first place, rather than seek a reserved channel.

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9 HCBI Petition, p. 3.

II. CONCLUSION

WHEREFORE, Cameron Broadcasting Company respectfully requests that Channel 286A not be assigned to Thorndale as proposed by Houston Christian Broadcasters, Inc. in the instant proceeding.

Respectfully Submitted,

Smithwick & Belendiuk, P.C.
5028 Wisconsin Ave., N.W.
Suite 301
Washington, D.C. 20016
(202) 363-4050

June 14, 2001

CAMERON BROADCASTING COMPANY

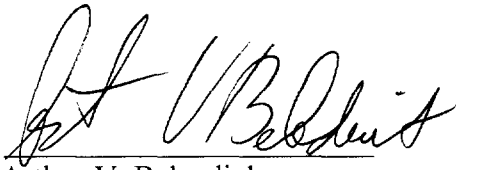
By: 
Arthur V. Belendiuk
Its Attorney

EXHIBIT 1

Doug Vernier
1600 Picturesque Drive
Cedar Falls, Iowa 50613

Telecommunication Consultants
dvernier@v-soft.com (319) 266-8402

Engineering Statement:
June 14, 2001

We have been asked by Cameron Broadcast Company to prepare a statement regarding the availability of non-commercial educational FM channel 211 to serve Thorndale, Texas and to provide a population and area comparison between the Cameron proposal's C3 facility and the Thorndale class A proposal.

We have repeated our 1999 study using the FCC's current CDBS database and we hereby reconfirm that, as of the date of this study, channel 211, 90.1 MHz continues to be available to serve Thorndale, Texas. From our suggested site coordinates some 5.87 miles north of Thorndale, we have determined that a station having 300 watts at an HAAT of 100 meters would provide a better than 60 dBu signal to all of Thorndale. Further, our analysis indicates that if a directional antenna were employed, a total of 2.3 kW can be directed toward Thorndale.

Thorndale, Texas receives the signals of three noncommercial station: KNCT FM on Channel 217C1 at Killeen, Texas, KMFA(FM) on Channel 208C1 at Austin, Texas and KUT 213C1 Austin. Both KNCT and KMFA provide a 60 dBu or better signal to Thorndale and KUT provides a near 60 dBu signal to Thorndale.

According to the PL 94-171, year 2000, block level, U.S. census the Cameron C3 proposal will provide 60 dBu or better coverage to an area of 4,489.7 square kilometers and serve a population of 57,285 people. The Thorndale 6 kW, class A allocation proposal, at maximum facilities, will serve and an area of 2,497.2 square kilometers and a population of 35,548. The current Cameron 6 kW existing Class A (KHTZ) facility serves an area of 2,424.0 square kilometers and a population of 25,601.

Page #2 of this statement is a map of the 60 dBu coverage of the Cameron proposal and the Thorndale allocation proposal. Page #3 is a channel study showing the availability of channel 211 at the study coordinates. Page #4 is a narrative on the conventions and abbreviations used in the study. Page # 5 is a statement of my qualifications.

Doug Vernier

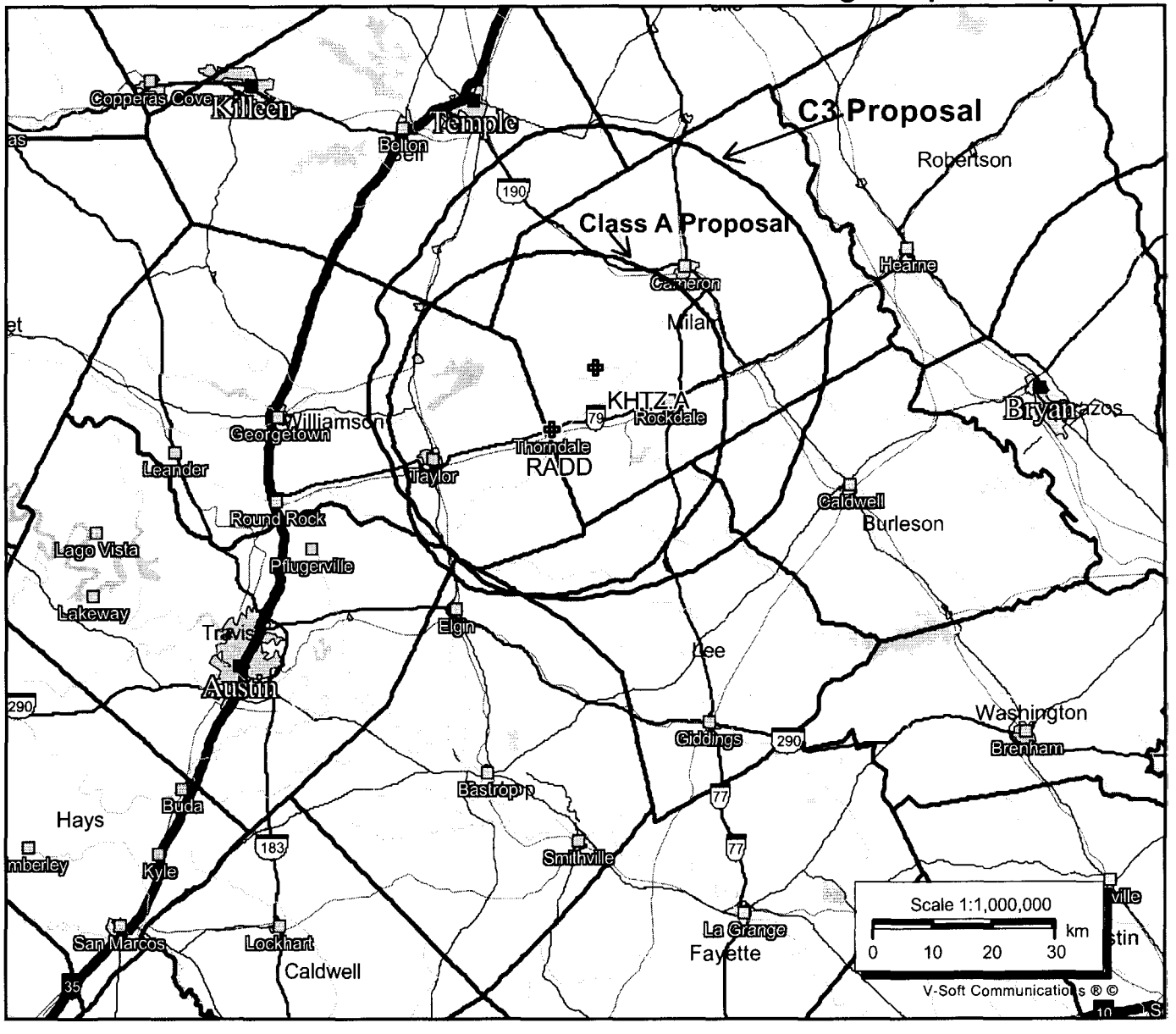
60 dBu Coverage Map of Proposals

RADD
RM9675
Latitude: 30-36-54 N
Longitude: 097-12-18 W
Power: 6.00 kW
Channel: 286
Frequency: 105.1 MHz
AMSL Height: 241.355 m
Elevation: 123.84 m
Horiz. Pattern: Omni
Prop Model: FCC

Area= 2,497.20
Pop= 35,542

KHTZA
BMPH19981202IA
Latitude: 30-42-19 N
Longitude: 097-07-56 W
Power: 22.00 kW
Channel: 286
Frequency: 105.1 MHz
AMSL Height: 229.0 m
Elevation: 121.0 m
Horiz. Pattern: Omni
Prop Model: FCC

Area= 4,489.7 sq km
Pop= 57,285



Doug Vernier
Telecommunication Consultants

HOW TO READ THE FM COMPUTER PRINT-OUT

The computer printout should be self-explanatory for the most part. The parameters of the station being checked, (reference station) are printed in the heading. The 60 dBu protected contour is predicted from the Commission's F(50-50) table, while the 40, 54, 80 and 100 dBu contours are interference contours derived from the Commission's F(50-10) table. Contour distances are in kilometers and are predicted using spline interpolation from data points identical to those published in Report No. RS 76-01 by Gary C. Kalagian. Critical contour distances are determined using the Commission's TVFMINT FORTRAN subroutine. When interference contour distances are less than 16 kilometers the F(50-50) tables are used. If signal contour distances are less than 1.6 km the free-space equation is used.

The column listed "* IN *" is the sum of the reference station's 60 dBu protected contour and the data file station's interference contour subtracted from the distance between the stations. (All distances are derived by the method detailed in Sec. 73.208 of the Rules and Regulations as amended in Docket 80-90.) Therefore, the column is a measure of incoming interference. Negative distances in this column indicate the presence of interference. Listed antenna heights are the average heights of eight standard radials as found in the Commission's records unless otherwise noted, in which case the specific antenna heights along the azimuths between the reference station and the database station are used and visa versa. The column labeled "* OUT *" shows the distance of kilometers of overlap or clearance between the reference station's interference contour and the database station's protected contour. Negative distance figures in this column indicate outgoing interference.

Under the "AZIMUTH" column, the first row of numbers indicate the bearings from true north of the data base stations in relationship with the reference station, while the numbers in the second row indicate the reverse bearings from the database station to the reference station.

The columns labeled "INT" and "PRO" hold the distance in kilometers of the appropriate interference contour and the protected contour of a data base station.

For I.F. relationships the "IN" and "OUT" columns change their significance. The letter "R" stands for the minimum **required** distance in kilometers, while the letter "M" in the next column follows the **available clear space** separation in kilometers. Minimum separation distances when displayed are taken from Sec 73.207 of the rules as amended. Canadian and Mexican separation distances, U/D ratios and protected contour values are from the US/Mexican Working Agreement and the US/Canada Working Agreement".

The first three letters of the "TYPE" column identify the current FCC status of the stations. The fourth letter will be a "D" or "Z" (Sec. 73.215) if the facility is directional. The fifth letter will be an E, H or V depending on the type of antenna polarization. The sixth letter will be a "Y" if the antenna uses beam tilt.

Study for Cameron Broadcasting Company

REFERENCE CH# 211A - 90.1 MHz, Pwr= 2.3 kW, HAAT=100.0 M, COR= 233 M DISPLAY DATES
30 41 58 N Average Protected F(50-50)= 22.79 km DATA 06-14-0
97 12 22 W Ave. F(50-10) 40 dBu= 71.9 54 dBu= 34.1 80 dBu= 7.1 100 dBu= 2.1 SEARCH 06-14-0

CH CALL / CITY	TYPE / STATE	AZI. <-- / DIST FILE #	LAT. / LNG.	Pwr(kW) COR(M) / HAAT(M) INT(km)	PRO(km) / LICENSEE	*IN* (Overlap in km)	*OUT*
210C2 *KBDE.C	CP DVN	347.0 64.72	31 16 05	6.822 361	33.8	0.53	11.49
Temple	TX	167.0 BMPED19980501MB	97 21 34	139 51.2	American Family Associatio		
> Reference HAAT at 347.0°= 93.6 M, Pwr= 0.3 kW, Pro. Dist. = 13.02 km, Int Dist. = 19.43 km							
211C KERA	LIC CY	6.5 209.73	32 34 43	100.000 581	78.6	5.44	59.25
Dallas	TX	186.5 BLED1280	96 57 12	384 181.5	North Texas Public Broadca		
211C1 *KPFT.A	APP CN	118.8 185.29	29 53 14	100.000 233	63.6	0.28	48.66
Houston	TX	298.8 BPED19970527IE	95 31 22	198 161.5	Pacifica Foundation		
> Reference HAAT at 118.8°= 106.2 M, Pwr= 2.3 kW, Pro. Dist. = 23.46 km, Int Dist. = 73.06 km							
211C1 KPFT	LIC CN	118.8 185.29	29 53 14	28.000 233	52.5	30.77	60.85
Houston	TX	298.8 BLED19970910KE	95 31 22	205 131.7	Pacifica Foundation		
210C3 970828	APP DVN	108.4 77.95	30 28 33	8.500 175	31.1	6.92	12.76
College Station	TX	288.4 BPED19970828MA	96 26 08	103 48.2	Hymn Time, Inc.		
208C1 KMFA	LIC CN	233.8 70.77	30 19 20	65.000 478	64.8	39.58	3.83
Austin	TX	53.8 BLED19921217KB	97 48 03	260 8.4	Capitol Broadcasting Assoc		
213C1 KUT	LIC CN	236.0 76.41	30 18 51	100.000 452	64.5	45.24	9.84
Austin	TX	56.0 BLED19820909AF	97 51 58	207 8.4	The University Of Texas At		
210A 970912	APP VN	93.6 82.30	30 39 02	0.125 242	13.5	39.19	34.68
Bryan / College Sta	TX	273.6 BPED19970912MA	96 20 57	155 20.3	Ed Media Found Of Bryan St		
211C2 KTXI	LIC DCN	250.2 191.50	30 06 14	50.000 704	50.6	32.63	69.04
Ingram	TX	70.2 BLED19980922KH	99 04 36	138 136.1	Texas Public Radio		
264C KASEFM	LIC CY	233.6 71.01	30 19 10	100.000 584	77.0	29.0R	42.0M
Austin	TX	53.6 BLH19820628AN	97 48 06	363 0.0	Capstar Tx Ltd Partnership		
210C3 KTSW	LIC DCN	217.7 146.15	29 39 20	10.500 275	26.3	82.15	85.70
San Marcos	TX	37.7 BLED19930827KC	98 07 59	65 41.2	Southwest Texas State Univ		
212C2 990601	APP DCN	198.2 164.96	29 17 08	41.000 139	25.4	100.00	105.49
Smiley	TX	18.2 BPED19990601MC	97 44 22	30 42.2	Hispanio Christian Communi		
209A 970304	APP CN	129.1 92.18	30 10 28	0.250 221	14.0	68.28	76.12
Brenham	TX	309.1 BPED19970304MB	96 27 43	118 1.1	American Family Associatio		
211A KSYMFM	LIC CN	222.1 186.54	29 26 50	5.700 260	17.8	92.17	96.85
San Antonio	TX	42.1 BLED19971230KB	98 29 55	39 71.6	San Antonio College		
06+2C KCENTV	LI HN	358.8 63.64	31 16 24	100.000 756	126.3	To Grd B=	-62.62
Temple	TX	178.8 BLCT19811231KH	97 13 14	573 0.0	Channel 6, Inc.		

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* = ERP and HAAT on direct line to and from reference station.

Declaration:

I, Douglas L. Vernier, declare that I have received training as an engineer from the University of Michigan School of Engineering. That, I have received degrees from the University in the field of Broadcast Telecommunications. That, I have been active in broadcast consulting for over 25 years;

That, I have held a Federal Communications Commission First Class Radiotelephone License continually since 1964. In 1985, this license was reissued by the Commission as a lifetime General Radiotelephone license no. PG-16-16464;

That, I am certified as a Professional Broadcast Engineer (#50258) by the Society of Broadcast Engineers, Indianapolis, Indiana. (Re-certified 10/2000.)

That, my qualifications are a matter of record with the Federal Communications Commission;

That, I have been retained by Cameron Broadcasting Company and as such have prepared the engineering showings appended hereto;

That, I have prepared these broadcast engineering showings, the technical information contained in same and the facts stated within are true of my knowledge;

That, under penalty of perjury, I declare that the foregoing is correct.

Douglas L. Vernier

Executed on June 14, 2001

Subscribed and sworn before me this 14th day of June 2001

Notary Public in and for the State of Iowa

My Commission Expires August 10, 2001

CERTIFICATE OF SERVICE

I, Angela Y. Powell, a paralegal in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that copies of the foregoing Reply Comments have been served by United States mail, postage prepaid this 14th day of June, 2001 upon the following:

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*Hand Delivered

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